DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-07-4111-02; Circular No. 2592]

Onshore Oil and Gas Operations; Amendment Revising the Regulations Implementing the Federal Oil and Gas Royalty Management Act and the Mineral Leasing Acts

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking revises the existing regulations on site security; noncompliance with the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation, order or notice issued thereunder, or the terms of any lease or permit issued thereunder; the assessments and penalties for such noncompliance or nonabatement; and the procedures for notice, review or relief. The final rulemaking also makes technical corrections to the regulations in Part 3160.

EFFECTIVE DATE: April 21, 1987

ADDRESS: Inquiries or suggestions should be sent to: Director (630), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:
Frank A. Salwerowicz, (303) 236-1750
or
Stephen Spector, (202) 653-2147
or
Robert C. Bruce, (202) 343-8735

SUPPLEMENTARY INFORMATION: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), was designed to assure proper and timely revenue accountability for production from onshore Federal and Indian oil and gas leases, to address Outer Continental Shelf matters, to address lease reinstatement, to prescribe onshore field operations requirements for inspections and enforcement actions, to establish the basis for cooperation with States and Indian tribes for onshore Federal leases, and to establish duties of lessees, operators and others involved in the production, storage, measurement and transportation or sale of oil and gas from Federal onshore and Indian leases.

A final rulemaking implementing the site security provisions of the Federal Oil and Gas Royalty Management Act was published in the **Federal Register** on July 11, 1983 (48 FR 31978), with an effective date of September 9, 1983. A final rulemaking implementing the penalty and other provisions of the Act as they related to onshore operations on Federal and Indian leases was published in the **Federal Register** on September 21, 1984 (49 FR 37356), with an effective date of October 22, 1984. On January 4, 1985, the Director, Bureau of Land Management, by the issuance of a policy directive, instituted a cap on assessments provided by the final rulemaking on onshore operations.

As a result of the numerous concerns expressed by Department of the Interior and Bureau of Land Management officials and representatives of the oil and gas industry, the Bureau held a series of public meetings during January and February 1985, to allow the interested public an opportunity to identify the specific issues which they felt needed review. Approximately 145 members of the public, mostly representatives of the oil and gas industry, appeared at the eight public meetings and gave their comments on the impacts of the final rulemaking implementing the penalty provisions of the Federal Oil and Gas Royalty Management Act.

The comments received on the final rulemaking on penalties resulted in the Bureau of Land Management establishing certain interim procedures for carrying out the purposes of the regulations and the Federal Oil and Gas Royalty Management Act which was noted in a **Federal Register** publication on March 22, 1985 (50 FR 11717). This publication also included a Notice of Intent to Propose Rulemaking. The Notice requested comments regarding the extent to which the existing regulations needed to more clearly define operational requirements of the Federal Oil and Gas Royalty Management Act and other oil and gas leasing laws, as well as comments on the development of a list of potential violations. A total of 68 comments were received in response to the Notice of Intent, including transcripts of the views presented at the public meetings.

A proposed rulemaking that would revise the existing oil and gas operating regulations was published in the **Federal Register** on January 30, 1986 (51 FR 3882), with a 60-day comment period. During the original comment period, the Bureau of Land Management held seven public meetings for the purpose of obtaining public comments on the proposed rulemaking. On March 3, 1986, the Bureau extended the comment period for an additional 15 days and scheduled four additional public meetings. The comment period resulted in written comments from 109 sources, while 45 individuals presented comments at the 11 public meetings. Fifty-three of the written comments were a form letter. Most of the comments presented at the public meetings were reflected in the written comments received by the Bureau. All comments, both those presented at the public meetings and the written comments, were given careful consideration as part of the decisionmaking process on the issuance of this final rulemaking. In discussing the comments, the preamble discusses all of the applicable comments and the action taken on them. Those comments that raised related issues are grouped for discussion in this preamble and are not individually discussed. Those comments that raised issues not directly related to the proposed rulemaking will be referred to the appropriate Bureau office for review and appropriate action.

Comments

Definitions

The vast majority of the comments and a significant number of the speakers at the public meetings recommended revisions of the definitions in the existing regulations as well as those contained in the proposed rulemaking. The comments, in most instances, offered specific language for amending the definitions with the aim of meeting the stated objectives without the perceived adverse consequences.

The term "authorized officer" was the subject of several comments, with many recommending that the term be broadened to include specific organizational levels below which actions could not be delegated. Some of the comments suggested that the term be replaced in the regulations with specific organizational titles. These comments have not been adopted by the final rulemaking. The term "authorized officer" is a generic term that is used throughout Title 43 of the Code of Federal Regulations as that Title relates to the Bureau of Land Management. The definition of this term for Groups 3000 and 3100 is set forth in § 3000.0-5. In its use of the term "authorized officer," the Bureau delegates actions required by the regulations to its officials at various organizational levels. As an example, an action delegated to an official at an area office might, in another State, be delegated to an official at the State office. The delegations for each State office are available for the public's information.

Several comments argued that the definition of the term "knowingly or willfully" used in the proposed

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rulemaking does not follow the intent of Congress as set forth in section 109 of the Federal Oil and Gas Royalty Management Act and is inconsistent with the views of the Associate Solicitor, Energy and Resources, in a memorandum dated April 29, 1985, which discussed the interpretations of that phrase. The phrase "disregard or indifference" was the focus of some specific comments which recommended that this phrase should be qualified by the use of the term "reckless." Comments also argued either that "repeated" violations should not be the sole basis for establishing that conduct is "knowingly or willfully" performed, or, in the alternative, that a consistent scheme must be shown. The comments further stated that the provision in the proposed rulemaking that specific intent is not required for a finding of "knowingly and willfully" is without basis in law and that the phrase "not negated or mitigated by a belief that the behavior is reasonable or legal" should be removed by the final rulemaking. After careful review of the comments, the Federal Oil and Gas Royalty Management Act and its legislative history, and the views of the Office of the Solicitor, the final rulemaking has revised this term.

The final rulemaking revises the first sentence of the proposed rulemaking to clarify how violations are committed "knowingly or willfully." The first requirement for having "knowingly or willfully" committed a violation is notice of the standard of behavior required by law. The duties and prohibited acts are set out in section 109 of the Federal Oil and Gas Royalty Management Act and in § 3163.2 of the final rulemaking. The issuance of this final rulemaking constitutes the third notice to lessees and operators of these duties and prohibited acts, with the enactment of the Federal Oil and Gas Royalty Management Act being the first notice and the publication of the final rulemaking on September 21, 1984, being the second notice. Lessees should be well aware of their duties and of what is prohibited.

The key issue then becomes the establishment of appropriate standards for determining whether conduct is done "knowingly or willfully." Although several of the comments refer to Congressional intent, the legislative history of the Federal Oil and Gas Royalty Management Act does not indicate that Congress intended any different standards than those applicable under other civil penalty provisions. These standards are set out in various judicial decisions interpreting "knowingly or willfully," many of which were analyzed by the Associate Solicitor in the memorandum of April 29, 1985. The memorandum identified "the mere act or failure to act, honest mistake, mere inadvertance, intentional act, knowledge that actions are contrary, plainly indifferent, intentional disregard, consistent pattern, premeditation, manipulative scheme, and bad intent or evil motive" as indicia to establish "intent." The memorandum concluded that the lower range—mere act, honest mistake and mere inadvertance—will not support a finding of "knowingly or willfully." The memorandum went on to conclude that the upper range, from "premeditation" to "evil motive," is used for assessing criminal penalties and is not required in a civil case. The standards of "knowingly or willfully" are conduct that fall within the middle range identified in the memorandum. In a recent decision, a Department of the Interior administrative law judge interpreted "knowingly or willfully" as used in section 109 of the Federal Oil and Gas Royalty Management Act for a royalty civil penalties case (*Marathon Oil Co.* v. *MMS*, No. MMS–5–1–P (April 23, 1986)). The administrative law judge conducted an analysis of case law similar to the one by the Associate Solicitor in the memorandum and reached similar conclusions.

Based on these analyses and the comments, the final rulemaking revises the proposed rulemaking to clarify what type of conduct constitutes conduct done "knowingly or willfully." First, the reference to "belief that action is reasonable or legal" is being revised to clarify that this concept only applies once the "knowing or willful" nature of the conduct is otherwise established. While this concept was not discussed by the Associate Solicitor, Energy and Resources, in the memorandum of April 29, 1986, it was recognized in the *Marathon* decision and is clearly established by judicial precedent (*United States* v. *McIntyre*, 582 F. 2d 1221 (9th Cir. 1978)). Second, the fact that a showing of "specific" intent is not required by the proposed rulemaking has been retained in the final rulemaking. This concept is clearly supported by the case law as not necessary for cases involving civil penalties. The suggestion in one of the comments that the decision of the Supreme Court in *Morissette* v. *United States* (342 U.S. 246 (1952)), controls this issue is misdirected. The *Morissette* case involved a criminal statute and penalty, not, as here, a civil statute and penalty. The Supreme Court clearly recognized this difference in decisions involving civil penalties (*United States* v. *Illinois Central Railroad Co.* (303 U.S. 239 (1938)). Third, the final rulemaking has amended the proposed rulemaking to qualify both "indifference" and "disregard" in order to reflect common judicial use of these standards. Finally, as one comment suggested, the final rulemaking has amended "repeated violation" to be a "consistent pattern" instead, again in in order to reflect more accurately judicial use of this standard.

Twenty comments expressed the view that the definition of the term "major violation" used in the proposed rulemaking was too broad and that this term was critical to the regulations as well as to the Onshore Oil and Gas Orders that are currently being developed. Of particular concern to those making comments was the inclusion of the word "potential" when describing resultant consequences. The comments also recommended inclusion of some qualifier to indicate that a major violation is one where the impact will be more than slight and that such impact must be adverse. The final rulemaking amends the proposed rulemaking by replacing the phrase "has the immediate potential to affect" with the phrase "causes or threatens immediate, substantial and adverse impact." As used in the final rulemaking, this phrase will apply to all types of impacts.

A few of the comments suggested simplifying the definition of the term "minor violations" that appears in the proposed rulemaking and to have it relate more closely to the term "major violations." The final rulemaking has adopted this suggestion.

Three of the comments addressed the term "new or resumed production" as it is used in the proposed rulemaking, with one finding it appropriate as it appears in the proposed rulemaking, another recommending a slight modification of the definition and the third finding the definition totally inappropriate. This definition was developed in response to specific comments made to the Notice of Intent to Propose Rulemaking published on March 22, 1985. The critical comments have raised no new issues. Therefore, the final rulemaking retains this definition as proposed.

The review of the existing regulations revealed an inconsistency between the definition of the term "onshore oil and gas order" as it is used in the definition section and § 3164.1(a). The final rulemaking has adopted a technical amendment to the definition section to remove the inconsistency.

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Jurisdiction

Several comments on this section suggested that the effect of these regulations should not be extended to cover operations conducted on private or fee lands within units and communitized areas. These comments suggested that a Federal or Indian interest of less than 10 percent of a unit or participating area be the basis for exempting those operations from Federal regulation. The proposed rulemaking contains language requiring that, unless specifically modified in any agreement, the regulations relating to site security, measurement, reporting of production and operations, and assessments of penalties for noncompliance with such requirements are applicable to all wells or facilities on State or privately-held mineral lands which affect Federal or Indian interests through agreements. The fact that Federal or Indian lands are committed to agreements for the purpose of drilling and development of those lands in the most benefical manner is all that is needed to establish the responsibility of the Bureau of Land Management to ensure that the intent of the Federal Oil and Gas Royalty Management Act and other mineral leasing laws as to royalty accountability is carried out on those lands. Therefore, the suggestions in the comments have not been accepted and the final rulemaking has adopted the language of the proposed rulemaking without change.

Well and Facility Identification

Several of the comments suggested that the final rulemaking adopt a grandfather clause for this section that provides for the utilization of existing signs, even if required information such as communitization and agreement numbers is not included on the sign, until such time as there is a need for replacement. The final rulemaking adopted these suggested changes to the proposed rulemaking by adding language to § 3162.6(b) that allows the information to be included upon future replacement of the sign, unless the authorized officer specifically requires its addition. Other comments on this section of the proposed rulemaking suggested that there should not be a requirement for the placement of signs on abandoned wells. The final rulemaking has adopted this change and requires a sign for each well, other than those wells that have been permanently abandoned. Finally, the final rulemaking makes a change in the title of § 3162.6 for clarification.

Measurement of Oil

While none of the comments on § 3162.7–2 of the proposed rulemaking suggested changes in this section, four comments recommended that the final rulemaking add specific authority for approval of off-lease activities. While approval of off-lease activity is currently granted under the general provisions of subpart 3161, the final rulemaking has adopted this suggested change to clarify the issue of approval of off-lease activity for oil and gas.

Site Security

Approximately 25 written comments were received on § 3162.7–4 of the proposed rulemaking and its requirements for minimum standards, site security plans, site facility diagrams, as well as other provisions. The final rulemaking has amended § 3162.7–4(a) by revising the terms "effectively sealed" and "seal" to make it clear that seals will be required on appropriate valves as opposed to fittings such as bullplugs. The final rulemaking also amends the definition of the term "production phase" to make it clear that this phase includes all operations not included in the term "sales phase."

The final rulemaking amends § 3162.7–4(b) to clarify that equipment, other than seals, used to effectively seal necessary valves must be on the site. The words "or connections" are being removed by the final rulemaking to make the section conform to the other portions of the section that seals on valves are only to assure the integrity of tanks used to store oil; i.e., any production removed through these valves requires the breaking of a seal. Additional discussion and clarification of the Bureau of Land Management's site security requirements, including the term "appropriate valves," will be contained in the applicable Onshore Oil and Gas Orders.

Section 3162.7–4(b)(2) of the proposed rulemaking is amended by the final rulemaking to remove the term "Automatic Custody Transfer" and replace it with the term "Lease Automatic Custody Transfer," since the term "Automatic Custody Transfer" commonly refers to pipeline and loading systems and not lease measurement systems.

The final rulemaking amends § 3162.7–4(b)(4) of the proposed rulemaking by removing the first sentence of the section because it serves no useful purpose and imposed a restriction on the operator as to when sales must be made from the lease. The second sentence of the section also has been modified by the final rulemaking to remove the phrase "including sales and equalizer lines" since the term "appropriate valves" already includes valves located on equalizer lines.

The final rulemaking deletes § 3162.7–4(b)(6) of the proposed rulemaking since oil in pits is covered by § 3162.7–1, Disposition of production. As a result of the deletion made by the final rulemaking, the remaining paragraphs of the section have been renumbered.

The final rulemaking has not adopted the suggestions of a few of the comments on § 3162.7–4(b)(9) of the proposed rulemaking, renumbered as § 3162.7–4(b)(8) by the final rulemaking, that theft or mishandling of oil need not be reported until "reasonably verified." The intent of this provision is for the authorized officer to receive initial notification of such suspected incidents as soon as discovered. Operators may submit amended, supplemental, or final reports as soon as their internal verification of the incident has been completed.

The final rulemaking adopts the comments made on § 3162.7–4(c) and makes a change to the proposed rulemaking to clarify that site security plans are required only for those leases which produce oil or condensate. Leases which produce only dry gas are not required to have a site security plan because they have no storage facilities.

The suggested comments on § 3162.7–4(d) of the proposed rulemaking concerning time frames for development of site security plans have not been adopted by the final rulemaking. The section requires site security plans within 60 days after completion of construction or first production, whichever occurs first. Any situations requiring variances of the minimum standards can be adequately handled by § 3162.7–4(b)(9) of the final rulemaking.

The final rulemaking, as recommended in a comment on § 3162.7–4(d) of the proposed rulemaking, amends the section to make it clear that facility diagrams do not have to be drawn to scale.

Assessments

Section 3163.3 of the proposed rulemaking, which has been retitled and renumbered by the final rulemaking, was the focus of several comments which questioned the authority of the Bureau of Land Management to establish assessments other than the civil penalties authorized in the Federal Oil and Gas Royalty Management Act. The comments raised serious concerns about the automatic nature of some of the assessments, arguing that notice and an opportunity to correct the

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noncompliance must be provided before an assessment can be made. The comments noted that the Linowes Commission indicated that the Bureau had no meaningful civil enforcement authority and questioned why Congress considered the Federal Oil and Gas Royalty Management Act civil penalty provisions necessary if the Bureau possesses independent authority. A few of the comments questioned the Bureau's use of the decision in *Forbes* v. *United States* (125 F. 2d 404 (9th Cir. 1942)), as recognition of assessment authority. Finally, one comment on this section of the proposed rulemaking stated that the Bureau has "repeatedly declined to define the statutory source" of its assessment authority.

The Bureau of Land Management appreciates the thoughtful concern exhibited in the comments on this point. However, the Bureau is of the view that it has strong support for the assessments, as well as a historical basis for their use. This support has been repeatedly referenced in the preambles to the proposed and final rulemakings published in the **Federal Register** on October 27, 1982 (46 FR 47758), on September 16, 1983 (48 FR 41739), on September 21, 1984 (49 FR 37356), and on January 30, 1986 (51 FR 3682).

The provisions of the regulations providing assessments have been promulgated under the Secretary of the Interior's general authority set out in section 32 of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 189), and under the various other mineral leasing laws. Specific authority for the assessments is found in section 31(a) of the Mineral Leasing Act (30 U.S.C. 188(a)), which states in part ". . . the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof." All Federal onshore and Indian oil and gas lessees must, by the specific terms of their leases, which incorporate the regulations by reference, comply with all applicable laws and regulations.

Failure of the lessee to comply with the law and applicable regulations is a breach of the lease, and such failure may also be a breach of other specific lease terms and conditions. Under section 31(a) of the Act and the terms of its leases, the Bureau may seek cancellation of the lease in these circumstances. However, since at least 1942, the Bureau (and formerly the Conservation Division, U.S. Geological Survey), has recognized that lease cancellation is too drastic a remedy except in extreme cases. Therefore, a system of liquidated damages was established to set lesser remedies in lieu of lease cancellation. None of the comments challenged the authority of the Secretary under section 31(a) of the Act to make such assessments.

The Bureau of Land Management recognizes that liquidated damages cannot be punitive, but are a reasonable effort to compensate as fully as possible the offended party, in this case the lessor, for the damage resulting from a breach where a precise financial loss would be difficult to establish. This situation occurs when a lessee fails to comply with the operating and reporting requirements. The rules therefore establish uniform estimates for the damages sustained, depending on the nature of the breach.

As noted above, the concept of liquidated damages was established as early as 1942 for breach of the operating regulations. In November 1981, a proposed rulemaking, that, among other things, would have increased the amount of the various liquidated damages assessments and would have provided a penalty of up to $1,000 per day for serious violations was published in the **Federal Register** (46 FR 56564). That proposed rulemaking also would have changed the label from "liquidated damages" to "assessments," although the discussion in the preamble made it clear that the purpose had not changed. In January 1982, the Linowes Commission recommended that Congress give the Department of the Interior civil penalty authority of up to $10,000 per day per violation. In November 1982, the increased assessments and the regulations incorporating them became effective. In January 1983, the Federal Oil and Gas Royalty Management Act was enacted. Neither the Linowes Commission nor the Congress recognized, or commented on, the proposed or final rulemakings, although the Linowes Commission noted that the then-existing liquidated damages regulations were "very small." The Commission did provide a draft of their report during the comment period and asked that it be considered in preparing the final rulemaking. Similarly, none of the comments on the 1981 proposed rulemaking challenged the authority of the Secretary of the Interior to issue such regulations. Thus, at the time of enactment of the Federal Oil and Gas Royalty Management Act there was no Congressional intent to supersede or supplant the Secretary's existing authority, as implemented in the final rulemaking of October 1982. Congress generally indicated its intention not to affect any existing authorities in section 304(a) of the Federal Oil and Gas Royalty Management Act. The Bureau, therefore, retained the Mineral Leasing Act assessments and penalty provisions of the then existing regulations when it issued final regulations for the Federal Oil and Gas Royalty Management Act in September 1984. In this proposed rulemaking, the penalty provisions of the Mineral Leasing Act would have been changed to an assessment when a lessee or operator fails to abate a major violation in a timely manner. The Bureau must continue to provide some remedy for the breach of the terms and conditions of a lease. The final rulemaking has retained the assessment process provided in the proposed rulemaking as a more equitable remedy than lease cancellation for initial enforcement efforts.

The comments specifically criticized the provision of the proposed rulemaking that would permit the assessment of damages without notice. Lessees and operators, of course, are expected to know the obligations and requirements of a Federal or Indian oil and gas lease. In essence, the comments complain that the proposed rulemaking fails to provide provisions for notifying them that they are failing to comply with requirements which are contained in their lease or the regulations that control their operations. The inconsistency of this argument is clear because the only violations assessed without notice and an opportunity to abate are set out in paragraph (b) of this section and cover only a failure to install blowout preventers, a failure to obtain approval prior to drilling, and a failure to obtain approval for well abandonment. These three enumerated requirements for Federal and Indian lease operations could not be clearer or more widely known. The Bureau finds that additional notice prior to the assessment is not warranted due to the serious nature and potential consequences of a breach of these requirements. With regard to the comments on the "automatic" assessment for multiple major violations contained in the proposed rulemaking, the Bureau agrees that each violation should be handled on its own merits and that the imposition of an automatic assessment, other than for those specific violations discussed above, is not appropriate. Accordingly, the final rulemaking has deleted this provision of the proposed rulemaking.

Those comments that criticized the use of the decision in *Forbes* v. *United States* as support for Mineral Leasing Act assessments are correct that this case does not involve liquidated

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damages. However, the Bureau of Land Management correctly used this decision as general support for the Secretary of the Interior's authority under the Mineral Leasing Act to collect damages for failure to comply with the orders of the authorized officer.

Finally, one comment expressed the view that the Bureau of Land Mangement has declined to explain its authority for Mineral Leasing Act assessments. While the preambles to the 1981, 1982, and 1983 rulemakings did not explain this authority beyond a reference to the Mineral Leasing Act, the preamble to the final rulemaking of September 1984, provides references to the appropriate sections of the Mineral Leasing Act. More importantly, the preamble to this proposed rulemaking provided a complete explanation of the Secretary of the Interior's authority. The explanation has been expanded in this preamble to provide better understanding as to the Bureau's position on this point. Although no comments were received regarding the Secretary's authority to impose assessments for violations occurring on Indian leases, this authority was recently upheld in the decision of the Interior Board of Land Appeals in *William Perlman* (93 I.D. 159, 91 IBLA 208 (1986)).

A number of the comments were concerned with the Bureau of Land Management's intention to enforce other agency safety and environmental requirements under both the assessment and penalty provisions of the proposed rulemaking. Although the final rulemaking makes changes in these provisions of the proposed rulemaking, it is intended that these provisions apply to violations of the regulations in 43 CFR Part 3160 or for violation of any notice, order or instruction or terms of a permit issued by the Bureau under the regulations in Part 3160.

Several of the comments suggested that the final rulemaking should modify § 3163.3(a)(2) of the proposed rulemaking, drilling without approval, to make it apply only to actual drilling operations, not to preliminary actions. The suggested change has not been adopted by the final rulemaking because the Bureau of Land Management considers the prior approval requirements for both the actual drilling and associated surface disturbance as being very clear and the prior approval of these operations is critical to proper multiple use management of the public lands. One of the comments suggested that the final rulemaking provide relief for stripper wells. This suggested change was not adopted by the final rulemaking because the administrative review procedures in § 3165.3 provide that the effect of the assessment on the continued operation of the well and potential for damage can be considered upon review.

Section 3163.3(b)(1) of the proposed rulemaking has been modified by the final rulemaking to clarify that assessments apply only when a site specific notice, order, or instruction is not abated within the time allowed. Violation of the requirements contained in a Notice to Lessees, Onshore Oil and Gas Order, or general conditions of approval on a drilling permit are not considered a failure to comply with the written orders of the authorized officer for the purposes of an assessment under this section.

Four comments on the January 30, 1986, proposed rulemaking recommended that the final rulemaking provide that the failure to submit the Monthly Report of Operations, Form 3160–6, be a minor violation. Because an automatic assessment seems inappropriate for failure to submit the Monthly Report of Operations, the final rulemaking has amended the proposed rulemaking to provide that where reports are not submitted within the time allowed by specific notice from the authorized officer, the provisions for nonabatement of a minor violation would be applicable.

Several comments on the proposed rulemaking suggested that the final rulemaking provide clarification of the authority of the State Director to reduce assessments. The final rulemaking has adopted this suggestion and has added a new paragraph (e) to § 3163.1 to provide the requested clarification.

Finally, the Bureau of Land Management's enforcement actions or remedies for noncompliance are located in three separate sections of the existing regulations and the proposed rulemaking: Sections 3163.1, 3163.2, and 3163.3. For clarification and simplification, the final rulemaking combines these three sections into a single section, § 3163.1. However, this change is not intended to modify the enforcement authority currently in effect, except as identified earlier in this preamble.

Penalties

The final rulemaking has renumbered § 3163.4 of the proposed rulemaking, as § 3163.2.

Many of the comments on this section of the proposed rulemaking object to provisions which were taken directly from the Federal Oil and Gas Royalty Management Act. Since the section restates provisions of the statute, the final rulemaking has not made changes in this section.

Several of the comments on this section of the proposed rulemaking expressed concern over possible duplication of penalties being used for a single instance of noncompliance. As discussed earlier in this preamble in connection with § 3163.1, the rulemaking is not intended to provide for duplicate enforcement.

Several of the comments suggested that this section of the proposed rulemaking be amended by the final rulemaking to remove the word "maximum" and replacing it with the phrase "up to" to allow local Bureau of Land Management offices to exercise judgment in establishing penalties for noncompliance. This suggested change has not been adopted by the final rulemaking. While the Bureau supports the exercise of local judgment and discretion, consistency of initial application of penalties is also important. Accordingly, rather than have over 100 local offices deciding on the amount of penalties, discretion to reduce assessments and penalties upon review is delegated to the State Directors.

Notice, Review and Appeal

Approximately 19 comments were received on the Notice provisions of the proposed rulemaking and 28 comments were received on the provisions on review and appeal.

Those comments on the Notice generally were of the view that the provisions in the proposed rulemaking were inadequate to assure that operators timely received notice so that necessary corrective action could be taken. The comments made the point that the presumption that notice is received within five days of mailing is not accurate considering the many small, isolated communities where some Bureau of Land Management offices are located. The final rulemaking finds merit in this view and has adopted a change that extends the time to seven days.

The comments also suggested that in order to assure prompt correction of major violations, a good faith effort should be made to telephone the operator's representative. The final rulemaking has adopted this suggested change since it aids the Bureau of Land Management's objective of prompt correction of violations.

The comments suggested that the final rulemaking provide for multiple "designated representatives" and "alternatives" for notification purposes. The final rulemaking has not adopted this suggestion. As discussed earlier in

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this preamble, it is reasonable to contact such designated representative concerning the correction of violations. Rather than require the Bureau of Land Management field employees to attempt to contact multiple parties, it should be the responsibility of the operator to assure that internal procedures are in place so that appropriate company personnel know to whom to refer such matters.

The comments on § 3165.3 (b) and (c) of the proposed rulemaking were of the view that the time allowed for filing of a Request for Administrative Review was too short in light of the fact that an appeal or hearing on the record is precluded unless such review is requested. It was agreed that the 10-day period from the receipt of a notice of violations for the filing of a Request for Administrative Review by the State Director was too short. Since the intent of this provision of the proposed rulemaking was to provide an operator with an opportunity for quick review but not to cut off any rights, the final rulemaking achieves this objective by extending this period to 20 days and by clarifying that further extension can be granted when justified. The phrase "oral argument" has been replaced with "oral presentation" to reflect more closely the desire to avoid overly formal procedures.

Many comments wanted the authority for "stopping-the-clock" clarified. Although some of the comments requested an automatic suspension of assessments and penalties upon the filing of a Request for Administrative Review, most of the comments recognized that automatic tolling of assessments or penalties during review could result in nearly all notices of noncompliance being taken to review. The final rulemaking has modified this section of the proposed rulemaking to provide that, upon request and a showing of good cause, the State Director may suspend the accumulation of assessments or penalties during the period of administrative review. This authority will be exercised only in those instances where the operator provides reasonable grounds in the request for such tolling.

Several comments suggested that the proposed rulemaking misinterpreted the Federal Oil and Gas Royalty Management Act by providing that the right of review by a District Court may be lost by not first requesting a hearing on the record. Section 109(j) of the Federal Oil and Gas Royalty Management Act expressly precludes judicial review unless the aggrieved party has requested a hearing on the record.

The comments on § 3165.3(d) of the proposed rulemaking stated that the accumulation of assessments or penalties should be automatically suspended during hearing on the record regarding a proposed penalty or during any appeal to the Interior Board of Land Appeals. Due to the length of time involved in the hearing and appeal process, it is agreed that the clock should be stopped on the accumulation either of penalties during a hearing on the record or of assessments or penalties during the period the lessee exercises the right to appeal the decision to the Interior Board of Land Appeals. The final rulemaking has adopted the recommended changes subject to a determination by the Director, Bureau of Land Management, to reinstate the daily accumulation of penalties in the case of those major violations that are considered serious. This procedure differs from that provided in the proposed rulemaking and followed by the Minerals Management Service in cases related to royalty. In those royalty cases where there is no harm to the lessor, the lessee may, if permitted by the Service, post a bond for the disputed amount in lieu of immediate payment and thereby satisfy the order to abate the violation.

Generally, a similar interim compliance procedure is not available for violations of the Bureau's operations procedures. Because of the difference in the way the Service and the Bureau handle the abatement of violations, this final rulemaking will provide for a continuation of the suspension of the daily accumulation of penalties and assessments unless the Director specifically decides to reinstate them. The effectiveness of the decision requiring that a violation be corrected will not, however, be suspended during the hearing or appeal. Sections 3165.3 and 3165.4 have been revised to consolidate the appeals provisions in one section.

Comments were also received on several issues which were raised in the preamble to the proposed rulemaking and are discussed below.

Phased Implementation

Two written comments were received on the issue of phased implementation. One of the comments expressed the view that there should be a period after publication of this final rulemaking, but prior to its effective date, where the affected public could recommend changes. This recommendation has not been adopted by the final rulemaking. Because of the impacts of the provisions of this final rulemaking, the final rulemaking allows a 60-day period, instead of the usual 30-day period, from the date of publication to the effective date to give the using public an opportunity to become familiar with the provisions of the rulemaking and make any needed changes in their operations. If the affected public raises substantive questions about the provisions of the final rulemaking, the Bureau of Land Management will review the issues raised to determine what changes, if any, should be adopted. If a determination is made that the provisions of the final rulemaking need to be changed, a proposed rulemaking will be issued making those changes. The other comment noted it was difficult to visualize a reasonable approach for phasing in of this final rulemaking, but that it would be appropriate to phase in the onshore operating orders that will be issued later. The Bureau of Land Management has delayed the publication of the proposed orders until after this final rulemaking has been published.

Operator's Self Compliance

There were three comments on the request in the preamble of the proposed rulemaking for suggestions for self compliance, including allowing an operator certain benefits or incentives. The comments supported the concept, with one of the comments adding that no "penalties or assessments be made" or that no accumulation of such penalties or assessments be considered. One of the comments recommended the creation of a formal recognition program for those operators who practice effective self compliance.

Even though the final rulemaking has not adopted any changes based on these comments, the Bureau of Land Management continues to encourage operator self compliance. This final rulemaking should provide enough of an opportunity for reasonable abatement times and consideration of various factors in the administrative review process for field personnel to take such a factor into consideration. If, at a later date, there is a need to provide additional encouragement for self compliance, steps will be taken to provide that encouragement.

Priority for Development of Onshore Oil and Gas Orders

Six comments were received in response to the request for public views on the development of Onshore Oil and Gas Orders which recommended that the Orders be phased in only after this final rulemaking has become effective.

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The comments also recommended a priority for issuance of the Orders, recommending the order in which they should be published. While the final rulemaking makes no changes in response to these comments, the Bureau of Land Management will not publish any of the Orders until after publication of this final rulemaking and the suggested priority for the publication of the Orders will be followed, with the Orders being phased in over time.

Sealing of Thief Hatches

Four comments were received in response to the request in the preamble to the proposed rulemaking on whether additional access points, such as thief hatches, should require sealing. The comments suggested that the sealing of thief hatches was unnecessary and unworkable because of the need for frequent access. Based on these suggestions, the final rulemaking has not made any change in the provisions of the proposed rulemaking relating to the sealing of additional access points.

Editorial and grammatical corrections as needed have been made.

The principal authors of this final rulemaking are Frank Salwerowicz, Deputy State Director for Minerals for the Colorado State Office; Tom Leshendok, Deputy State Director for Minerals for the Nevada State Office, and Gene Daniel, retired Deputy State Director for Minerals for the Montana State Office, all of the Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management and the staff of the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The cost or economic effect of the final rulemaking will be minimal or nonexistent so long as operators comply with the requirements or take corrective action in a timely manner.

There are no additional information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas production, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.), Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

J. Steven Griles,

Assistant Secretary of the Interior.

January 13, 1987.

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for acquired Lands, as amended (30 U.S.C. 351–359), the Act of May 21, 1930, (30 U.S.C. 301–306), the Act of March 3,1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 et seq.); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

2. Note 1, *Operating Forms,* is amended as follows:

A. In the first column, the number "9–330" is removed and replaced with the number "3160–4", the number "9–329/329A" is removed and replaced with the number "3160–6" and the number "9–331C" is removed and replaced with the number "3160–3";

B. In the middle column, in the second paragraph, the word "production" is removed and replaced with the word "operation" and in the fourth paragraph the word "Due" is removed and replaced with the word "Filed"; and

C. In the third column, the number "1010–0004" is removed and replaced with the number "1004–0137", the number "1010–0005" is removed and replaced with the number "1004–0138" and the number is "1010–0003" is removed and replaced with the number "1004–0136".

3. Note 1, *Other Operating Requirements,* is amended by removing from where it appears the phrase "Clearance Number 1010–0001" and replacing it with the phrase "Clearance Number 1004–0134".

§ 3160.0–5 [Amended]

4. Section 3160.0–5 is amended by:

A. Amending the term "*avoidably lost*" by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer";

B. Amending the term "*notice to lessees and operators (NTL)*" by removing from where it appears the word "DMM" and replacing it with the phrase "authorized officer" and by removing from where it appears the phrase "Region or portion thereof" and replacing it with the phrase "State, District or Area";

C. Amending the term "*waste of oil or gas*" by removing it from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer";

D. Adding the following terms to read:

"*Knowingly or willfully.* A violation is "knowingly or willfully" committed if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or duty with is required. It does not include performances or failures to perform which are honest mistakes or which are merely inadvertent. It includes, but does not require, performances or failures to perform which result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of the lease. A consistent pattern of performance of failure to perform may also be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistake or mere inadvertency. Conduct which is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.";

"*Major violation.* Noncompliance which causes or threatens immediate, substantial and adverse impacts on public health and safety, the

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environment, production accountability, or royalty income.";

"*Minor violation.* Noncompliance which does not rise to the level of a "major violation.' ";

"*New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act.* The date on which a well commences production, or resumes produciton after having been off production for more than 90 days, is to be construed as follows:

(a) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs;

(b) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs. For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production."; and

E. Amending the term "Onshore Oil and Gas Order" by removing from where it appears the word "implements" and replacing it with the phrase "implements and supplements".

5. Section 3161.1 is revised to read:

§ 3161.1 Jurisdiction.

(a) All operations conducted on a Federal or Indian oil and gas lease by, or on behalf of, the lessee are subject to the regulations in this part.

(b) Regulations in this part relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement which affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

6. Section 3161.2 is amended by removing from where it appears the phrase "to assess monetary penalties or liquidated damages;" and replacing it with the phrase "to impose monetary assessments or penalties;", and by removing from where it appears the phrase "technical and procedural reviews" and replacing it with the phrase "administrative reviews".

§ 3161.3 [Amended]

7. Section 3161.3(b) is revised to read:

* * * * *

(b) in accomplishing the inspections, the authorized officer may utilize Bureau personnel, may enter into cooperative agreements with States or Indian Tribes, may delegate the inspection authority to any State, or may contract with any non-Federal Government entities. Any cooperative agreement, delegation or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

§ 3162.3 [Amended]

8. Section 3162.3(b) is amended by removing the last two sentences.

§ 3162.3-1 [Amended]

9. Section 3162.3-1(d) is amended by removing from where it appears the phrase "Form 9-331c" and replacing it with the phrase "Form 3160-3."

§ 3162.3-2 [Amended]

10. Section 3162.3-2 is amended by removing from where it appears in paragraphs (a) and (b) the phrase "Form 9-331" and replacing it with the phrase "Form 3160-5" and further amending paragraph (a) by removing the phrase "shut off conversion" and replacing it with the phrase "shut off, commingling production between intervals and/or conversion".

§ 3162.3-3 [Amended]

11. Section 3162.3-3 is amended by removing from where it appears the phrase "Form 9-331" and replacing it with the phrase "Form 3160-5".

§ 3162.4-1 [Amended]

12. Section 3162.4-1(b) is amended by removing from where it appears the phrase "Form 9-330" and replacing it with the phrase "Form 3160-4".

§ 3162.4-3 [Amended]

13. Section 3162.4-3 is amended by:

A. Amending the title by removing from where it appears the phrase "(Form 9-329 Public; Form 9-329A Indian)" and replacing it with the phrase "(Form 3160-6)"; and

B. Amending the initial paragraph of the section by removing from where it appears the phrase "Form 9-329" and replacing it with the phrase "Form 3160-6", by removing from where it appears the phrase "in duplicate" and by removing from where it appears the phrase "production month" and replacing it with the phrase "operation month".

14. Section 3162.6 is revised to read:

§ 3162.6 Well and facility identification.

(a) Every well within a Federal or Indian lease or supervised agreement shall have a well indentification sign. All signs shall be maintained in a legible condition.

(b) For wells located on Federal and Indian lands, lessees shall properly identify, by a sign in a conspicuous place, each well, other than those permanently abandoned. The well sign shall include the well number, the name of the operator, the lease serial number, the surveyed location (the quarter-quarter section, section, township and range or other authorized survey designation acceptable to the authorized officer; such as metes and bounds). When approved by the authorized officer, individual well signs may display only a unique well name and number. When specifically requested by the authorized officer, the sign shall include the unit or communitization name or number. The authorized officer may also require the sign to include the name of the Indian allottee lessor(s) preceding the lease serial number. In all cases, individual well signs in place on the effective date of this rulemaking which do not have the unit or communitization agreement number or do not have quarter-quarter identification will satisfy these requirements until such time as the sign is replaced. All new signs shall have identification as above, including quarter-quarter section.

(c) All facilities at which Federal or Indian oil is stored shall be clearly identified with a sign that contains the name of the operator, the lease serial number or communitization or unit agreement identification number, as appropriate, and in public land states, the quarter-quarter section, township, and range. On Indian leases, the sign also shall include the name of the appropriate Tribe and whether the lease is tribal or allotted. For situations of 1 tank battery servicing 1 well in the same location, the requirements of this paragraph and paragraph (b) of this section may be met by 1 sign as long as it includes the information required by both paragraphs. In addition, each storage tank shall be clearly identified by a unique number. All identification shall be maintained in legible condition and shall be clearly apparent to any person at or approaching the sales or transportation point. With regard to the quarter-quarter designation and the unique tank number, any such designation established by state law or regulation shall satisfy this requirement.

(d) All abandoned wells shall be marked with a permanent monument containing the information in paragraph (b) of this section. The requirement for a

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permanent monument may be waived in writing by the authorized officer.

§§ 3162.7-2 and 3162.7-3 [Amended]

15. Section 3162.7-2 is amended by removing from where it appears the phrase "measured by" and replacing it with the phrase "measured on the lease by", and by adding at the end of the section the sentence, "Off-lease storage or measurement, or commingling with production from other sources prior to measurement, may be approved by the authorized officer." and § 3162.7-3 is amended by adding at the end of the section the sentence, "Off-lease measurement or commingling with production from other sources prior to measurement may be approved by the authorized officer."

§ 3162.7-4 [Amended]

16. Section 3162.7-4 is amended by:

A. Amending paragraph (a) by removing in their entirety from where they appear the terms "closed system" and "open system" and the term "appropriate valves" is revised to read *"Appropriate valves.* Those valves in a particular piping system, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation."; and the term "effectively sealed" is revised to read *"Effectively sealed.* The placement of a seal in such a manner that the position of the sealed valve may not be altered without the seal being destroyed.", by amending the term "seal" by removing from where it appears the word "fitting" and replacing it with the word "valve", and by amending the term "production phase" by removing the period at the end thereof and adding the phrase "and includes all operations at the facility other than those defined by the sales phase."; and

B. Revising paragraphs (b) through (d) to read:

* * * * *

(b) *Minimum Standards.* Each operator of a Federal or Indian lease shall comply with the following minimum standards to assist in providing accountability of oil or gas production:

(1) All lines entering or leaving oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise modified by other subparagraphs of this paragraph, and any equipment needed for effective sealing, excluding the seals, shall be located at the site. For a minimum of 6 years the operator shall maintain a record of seal numbers used and shall document on which valves or connections they were used as well as when they were installed and removed. The site facility diagram(s) shall show which valves will be sealed in which position during both the production and sales phases of operation.

(2) Each Lease Automatic Custody Transfer (LACT) system shall employ meters that have non-resettable totalizers. There shall be no by-pass piping around the LACT. All components of the LACT that are used for volume or quality determinations of the oil shall be effectively sealed. For systems where production may only be removed through the LACT, no sales or equalizer valves need be sealed. However, any valves which may allow access for removal of oil before measurement through the LACT shall be effectively sealed.

(3) There shall be no by-pass piping around gas meters. Equipment which permits changing the orifice plate without bleeding the pressure off the gas meter run is not considered a by-pass.

(4) For oil measured and sold by hand gauging, all appropriate valves shall be sealed during the production or sales phase, as applicable.

(5) Circulating lines having valves which may allow access to remove oil from storage and sales facilities to any other source except through the treating equipment back to storage shall be effectively sealed as near the storage tank as possible.

(6) The operator, with reasonable frequency, shall inspect all leases to determine production volumes and that the minimum site security standards are being met. The operator shall retain records of such inspections and measurements for 6 years from generation. Such records and measurements shall be available to any authorized officer or authorized representative upon request.

(7) Any person removing oil from a facility by motor vehicle shall possess the identification documentation required by appicable NTL's or onshore Orders while the oil is removed and transported.

(8) Theft or mishandling of oil from a Federal or Indian lease shall be reported to the authorized officer as soon as discovered, but not later than the next business day. Said report shall include an estimate of the volume of oil involved. Operators also are expected to report such thefts promptly to local law enforcement agencies and internal company security.

(9) Any operator may request the authorized officer to approve a variance from any of the minimum standards prescribed by this section. The variance request shall be submitted in writing to the authorized officer who may consider such factors as regional oil field facility characteristics and fenced, guarded sites. The authorized officer may approve a variance if the proposed alternative will ensure measures equal to or in excess of the minimum standards provided in paragraph (b) of this section wil be put in place to detect or prevent internal and external theft, and will result in proper production accountability.

(c) *Site security plans.* (1) Site security plans, which include the operator's plan for complying with the minimum standards enumerated in paragraph (b) of this section for ensuring accountability of oil/condensate production are required for all facilities and such facilities shall be maintained in compliance with the plan. For new facilities, notice shall be given that it is subject to a specific existing plan, or a notice of a new plan shall be submitted, no later than 60 days after completion of construction or first production or following the inclusion of a well on committed non-Federal lands into a federally supervised unit or communitization agreement, whichever occurs first, and on that date the facilities shall be in compliance with the plan. At the operator's option, a single plan may include all of the operator's leases, unit and communitized areas, within a single BLM district, provided the plan clearly identifies each lease, unit, or communitized area included within the scope of the plan and the extent to which the plan is applicable to each lease, unit, or communitized area so identified.

(2) The operator shall retain the plan but shall notify the authorized officer of its completion and which leases, unit and communitized areas are involved. Such notification is due at the time the plan is completed as required by paragraph (c)(1) of this section. Such notification shall include the location and normal business hours of the office where the plan will be maintained. Upon request, all plans shall be made available to the authorized officer.

(3) The plan shall include the frequency and method of the operator's inspection and production volume recordation. The authorized officer may, upon examination, require adjustment of the method or frequency of inspection.

(d) *Site facility diagrams.* (1) Facility diagrams are required for all facilities which are used in storing oil/condensate produced from, or allocated to, Federal or Indian lands. Facility diagrams shall be filed within 60 days after new measurement facilities are installed or existing facilities are modified or

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following the inclusion of the facility into a federally supervised unit or communitization agreement.

(2) No format is prescribed for facility diagrams. They are to be prepared on 8½" × 11" paper, if possible, and be legible and comprehensible to a person with ordinary working knowledge of oil field operations and equipment. The diagram need not be drawn to scale.

(3) A site facility diagram shall accurately reflect the actual conditions at the site and shall, commencing with the header if applicable, clearly identify the vessels, piping, metering system, and pits, if any, which apply to the handling and disposal of oil, gas and water. The diagram shall indicate which valves shall be sealed and in what position during the production or sales phase. The diagram shall clearly identify the lease on which the facility is located and the site security plan to which it is subject, along with the location of the plan.

§ 3163.1 [Amended]

17. Section 3163.1 is revised to read:

§ 3163.1 Remedies for acts of noncompliance.

(a) Whenever a lessee fails or refuses to comply with the regulations in this part, the terms of any lease or Permit, or the requirements of any notice or order, the authorized officer shall notify the lessee in writing of the violation or default. Such notice shall also set forth a reasonable abatement period:

(1) If the violation or default is not corrected within the time allowed, the authorized officer may subject the lessee to an assessment of not more than $500 per day for each day nonabatement continues where the violation or default is deemed a major violation;

(2) Where noncompliance involves a minor violation, the authorized officer may subject the lessee to an assessment of $250 for failure to abate the violation or correct the default within the time allowed;

(3) When necessary for compliance, or where operations have been commenced without approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income, the authorized officer may shut down operations. Immediate shut-in action may be taken where operations are initiated and conducted without prior approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income. Shut-in actions or other situations may be taken only after due notice, in writing, has been given;

(4) When necessary for compliance, the authorized officer may enter upon a lease and perform, or have performed, at the sole risk and expense of the lessee, operations that the lessee fails to perform when directed in writing by the authorized officer. Appropriate charges shall include the actual cost of performance, plus an additional 25 percent of such amount to compensate the United States for administrative costs. The lessee shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be entered;

(5) Continued noncompliance may subject the lessee to lease cancellation and forfeiture under the bond. The lessee shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be recommended for cancellation and forfeiture declared under the surety bond;

(6) Where actual loss or damage has occurred as a result of the lessee's noncompliance, the actual amount of such loss or damage shall be charged to the lessee.

(b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

(1) For failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(2) For drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(3) For failure to obtain approval of a plan for well abandonment prior to commencement of such operations, $500.

(c) Assessments under paragraph (a)(1) of this section shall not exceed $1,000 per day, per operator, per lease. Assessments under paragraph (a)(2) of this section shall not exceed a total of $500 per operator, per lease, per inspection.

(d) Continued noncompliance shall subject the lessee to penalties described in § 3163.2 of this title.

(e) On a case-by-case basis, the State Director may compromise or reduce assessments under this section. In compromising or reducing the amount of the assessment, the State Director shall state in the record the reasons for such determination.

§§ 3163.2 and 3163.3 [Removed]

18. Sections 3163.2 and 3163.3 are removed in their entirety.

19. Section 3163.4–1 is redesignated as § 3163.2 and is revised to read:

§ 3163.2 Civil penalties.

(a) Whenever a lessee fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation thereunder, or the terms of any issue or permit issued thereunder, the authorized officer shall notify the lessee in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice was previously issued under § 3163.1 of this title. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of § 3163.1(a)(1) of this title shall be deducted from penalties under this section.

(b) If the violation specified in paragraph (a) of this section is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $5,000 per violation for each day the violation continues, not to exceed a maximum of 60 days, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of § 3163.1(a)(1) of this title shall be deducted from penalties under this section.

(c) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(d) Whenever a transporter fails to permit inspection for proper documentation by any authorized representative, as provided in § 3162.7–1(c) of this title, the transporter shall be liable for a civil penalty of up to $500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit

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inspection and continuing until the proper documentation is provided.

(e) Any person shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Fails or refuses to permit lawful entry or inspection authorized by § 3162.1(b) of this title; or

(2) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, Form 3160–5 or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed.

(f) Any person shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(2) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal or Indian lease site without having valid legal authority to do so; or

(3) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal or Indian lease site.

(g) Determinations of Penalty Amounts for this section are as follows:

(1) For major violations, all initial proposed penalties shall be at the maximum rate provided in paragraphs (a), (b), and (d) through (f) of this section, i.e., in paragraph (a) of this section, the initial proposed penalty for a major violation shall be at the rate of $500 per day through the 40th day of a noncompliance beginning after service of notice, and in paragraph (b) of this section, $5,000 per day for each day the violation remains uncorrected after the date of notice or report of the violation. Such penalties shall not exceed a rate of $1,000 per day, per operator, per lease under paragraph (a) of this section or $10,000 per day, per operator, per lease under paragraph (b) of this section. For paragraphs (d) through (f) of this section, the rate shall be $500, $10,000, and $25,000, respectively.

(2) For minor violations, no penalty under paragraph (a) of this section shall be assessed unless:

(i) The lessee has been notified of the violation in writing and did not correct the violation within the time allowed; and

(ii) The lessee has been assessed $250 under § 3163.1 of this title and a second notice has been issued giving an abatement period of not less than 20 days; and

(iii) The noncompliance was not abated within the time allowed by the second notice. The initial proposed penalty for a minor violation under paragraph (a) of this section shall be at the rate of $50 per day beginning with the date of the second notice. Under paragraph (b) of this section, the penalty shall be at a daily rate of $500. Such penalties shall not exceed a rate of $100 per day, per operator, per lease under paragraph (a) of this section, of $1,000 per day, per operator, per lease under paragraph (b) of this section.

(h) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under this section. In compromising or reducing the amount of a civil penalty, the Secretary shall state on the record the reasons for such determination.

(i) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of law, except as provided in paragraphs (a) and (b) of this section.

(j) If the violation continues beyond the 60-day maximum specified in paragraph (b) of this section or beyond the 20 day maximum specific in paragraphs (e) and (f) of this section, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(k) If the violation continues beyond the 20-day maximum specified in paragraph (d) of this section, the authorized officer shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that authorized officer or to remove any crude oil or liquid hydrocarbons allocation to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and related penalty paid.

20. Section 3163.4–2 is redesignated as § 3163.3.

21. A new § 3163.4 is added to read:

§ 3163.4 Failure to pay.

If any person fails to pay an assessment or a civil penalty under § 3163.1 or § 3163.2 of this title after the order making the assessment or penalty becomes a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by § 3165.3(d)(2) of this title. The Federal Oil and Gas Royalty Management Act requires that any judgment by the court shall include an order to pay.

§ 3163.5 [Amended]

22. Section 3163.5 is amended by removing from where it appears in paragraph (b) the citation "3163.4–1" and replacing it with the citation "3163.2" and by removing from where it appears in paragraph (c) the citation "3163.4–1(b)" and replacing it with the citation "3163.2".

23. Section 3165.3 is revised to read:

§ 3165.3 Notice State Director review and hearing on the record.

(a) *Notice.* Whenever a lessee fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, written notice shall be given the lessee to remedy any defaults or violations. Written orders or a notice of violation, assessment, or proposed plenalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 7 business days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice of violation, assessment, or proposed penalty on his/her behalf. In the case of a major violation, the authorized officer shall make a good faith effort to contact such designated representative by telephone to be followed by a written notice. Receipt of notice shall be deemed to occur at the time of such verbal communication, and the time of notice and the name of the receiving party shall be confirmed in the file. If the good faith effort to contact the designated representative is unsuccessful, notice of the major violation may be given to any person authorized by the lessee to conduct or supervise operations subject to the regulations in this part. In the case of a minor violation, written notice shall be provided as described above. A copy of all orders, notices, or instructions served on any contractor or field employee shall also be mailed to the lessee or the lessee's designated representative as described above. Any notice involving a

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civil penalty shall be mailed to the lessee of record.

(b) *State Director review.* Any adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director, either with or without oral presentation. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received and shall be filed with the appropriate State Director. Upon request and showing of good cause, an extension for submitting supporting date may be granted by the State Director. Such review shall include all factors or circumstances relevant to the particular case. Any party who is adversely affected by the State Director's decision may appeal that decision to the Interior Board of Land Appeals as provided in § 3165.4 of this part.

(c) *Review of proposed penalties.* Any adversely affected party wishing to contest a notice of proposed penalty shall request an administrative review before the State Director under the procedures set out in paragraph (b) of this section. However, no civil penalty shall be assessed under this part until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of the Federal Oil and Gas Royalty Management Act. Therefore, any party adversely affected by the State Director's decision on the proposed penalty, may request a hearing on the record before an Administrative Law Judge or, in lieu of a hearing, may appeal that decision directly to the Interior Board of Land Appeals as provided in § 3165.4(b)(2) of this part. If such party elects to request a hearing on the record, such request shall be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the State Director's decision on the notice of proposed penalty. Where a hearing on the record is requested, the State Director shall refer the complete case file to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge in accordance with part 4 of this title. A decision shall be issued following completion of the hearing and shall be served on the parties. Any party, including the United States, adversely affected by the decision of the Administrative Law Judge may appeal to the Interior Board of Land Appeals as provided in § 3163.4 of this title.

(d) *Action on request for State Director review: Action on request for administrative review.* The State Director shall issue a final decision within 10 business days of the receipt of a complete request for administrative review or, where oral presentation has been made, within 10 business days therefrom. Such decision shall represent the final Bureau decision from which further review may be obtained as provided in paragraph (c) of this section for proposed penalties, and in § 3165.4 of this title for all decisions.

(e) *Effect of request for State Director review or for hearing on the record.*

(1) Any request for review by the State Director under this section shall not result in a suspension of the requirement for compliance with the notice of violation or proposed penalty, or stop the daily accumulation of assessments or penalties, unless the State Director to whom the request is made so determines.

(2) Any request for a hearing on the record before an administrative law judge under this section shall not result in a suspension of the requirement for compliance with the decision, unless the administrative law judge so determines. Any request for hearing on the record shall stop the accumulation of additional daily penalties until such time as a final decision is rendered, except that within 10 days of receipt of a request for a hearing on the record, the State Director may, after review of such request, recommend that the Director reinstate the accumulation of daily civil penalties until the violation is abated. Within 45 days of the filing of the request for a hearing on the record, the Director may reinstate the accumulation of civil penalties if he/she determines that the public interest requires a reinstatement of the accumulation and that the violation is causing or threating immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not reinstate the daily accumulation within 45 days of the filing of the request for a hearing on the record, the suspension shall continue.

24. Section 3165.4 is revised to read:

§ 3165.4 Appeals.

(a) *Appeal of decision of State Director.* Any party adversely affected by the decision of the State Director after State Director review, under § 3165.3(b) of this title, of a notice of violation or assessment or of an instruction, order, or decision may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations set out in Part 4 of this title.

(b) *Appeal from decision on a proposed penalty after a hearing on the record.* (1) Any party adversely affected by the decision of an Administrative Law Judge on a proposed penalty after a hearing on the record under § 3165.3(c) of this title may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations in Part 4 of this title.

(2) In lieu of a hearing on the record under § 3165.3(c) of this title, any party adversely affected by the decision of the State Director on a proposed penalty may waive the opportunity for such a hearing on the record by appealing directly to the Interior Board of Land Appeals under Part 4 of this title. However, if the right to a hearing on the record is waived, further appeal to the District Court under section 109(j) of the Federal Oil and Gas Royalty Management Act is precluded.

(c) *Effect of appeal on compliance requirements.* Except as provided in paragraph (d) of this section, an appeal shall not result in a suspension of the requirement for compliance with the order or decision from which the appeal is taken unless the Interior Board of Land Appeals determines that suspension of the requirements of the order or decision will not be detrimental to the interests of the lessor or upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

(d) *Effect of appeal on assessments and penalties.* (1) Except as provided in subparagraph (3) of this paragraph, an appeal filed pursuant to paragraph (a) of this section shall suspend the accumulation of additional daily assessments. However, the pendency of an appeal shall not bar the authorized officer from assessing civil penalties under § 3163.3 of this title in the event the lessee has failed to abate the violation which resulted in the assessment. The Board of Land Appeals may issue appropriate orders to coordinate the pending appeal and the pending civil penalty proceeding.

(2) Except as provided in subparagraph (3) of this paragraph, an appeal filed pursuant to paragraph (b) of this section shall suspend the accumulation of additional daily civil penalties.

(3) When an appeal is filed under paragraph (a) or (b) of this section, the State Director may, within 10 days of receipt of the notice of appeal, recommend that the Director reinstate

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